

Board of Chiropractic Examiners
INITIAL STATEMENT OF REASONS

Hearing Date: September 1, 2008 in Sacramento, California.

Subject Matter of Proposed Regulations: Letter of Admonishment

Sections Affected:

The proposed regulations would add Section 389, which is contained in Article 9 in Division 4 of Title 16 of the California Code of Regulations (CCR).

Specific Purpose and Factual Basis of each adoption, amendment, or repeal:

Section 389(a)

This subdivision specifies that the executive officer or his or her designee is authorized to issue a letter of admonishment to a licensee for failure to comply with any provision of the Chiropractic Initiative Act or the statutes or regulations governing the practice of chiropractic.

This language is necessary because it should be clear who at the board has the authority to issue letters of admonishment with or without an order of abatement and be informed of the legal citation to the Act, statute or regulation for which the licensee is being admonished.

Currently, the board has no informal method of enforcement for minor violations that do not rise to the level of citation or an accusation. Adoption of this proposal is necessary to provide the board's enforcement program with additional tools for enforcing compliance with applicable laws and regulations, which increases consumer protection.

Section 389(b)

This subdivision specifies that the letter of admonishment must be in writing and must describe in detail the nature and facts of the violation, including a reference to the specific law at issue.

This language is necessary because the board wants to provide licensees with the appropriate due process when a letter of admonishment is issued. A licensee should know the nature, facts and citation to law of the violation the board believes they have committed in order to be able to refute the allegations.

Section 389(c)

This subdivision specifies that the letter of admonishment shall be served upon the licensee personally or by certified mail at the licensee's address of record. It also

specifies that if the licensee is served by certified United States mail, service shall be effective upon deposit in the United States mail.

This language is necessary because the board needs to ensure that licensees actually receive letters of admonishment so that they are aware that a letter has been issued and what their appeal rights are once they receive a letter. It is also important to specify when the clock starts to run for a licensee to contest the issuance of a letter of admonishment.

Section 389(d)

This subdivision specifies that the letter of admonishment shall inform the licensee that within 30 days of the date of the letter they must either send in an appeal in writing or comply with the letter of admonishment.

This language is necessary because licensees should be provided sufficient time to determine if they wish to accept or appeal the issuance of the letter of admonishment. The board determined that less than 30 days does not provide a licensee with sufficient time to correct a violation. It also felt that allowing for more than 30 days would be contrary to its mission to protect consumers from licensees who are in violation of the law.

Section 389(d)(1)

This subparagraph specifies that the licensee must submit a written request for an office conference to the executive officer of the board if he or she wishes to contest the issuance of the letter of admonishment.

This language is necessary because a licensee should know what form they need to use when contesting the issuance of the letter of admonishment. The licensees should also know that they must submit the letter asking for an office conference to the executive officer of the board and what information should be included.

Section 389(d)(1)(A)

This subparagraph specifies that upon receipt of a timely request, the executive officer or his or her designee shall hold an office conference with the licensee or the licensee's legal counsel or authorized representative. It also specifies that unless authorized by the executive officer, no individual other than the legal counsel or authorized representative of the licensee may accompany the licensee to the office conference.

This language is necessary because a letter of admonishment is an informal enforcement action that does not adversely affect the status of a license. An office conference is not a hearing or tribunal in any sense of the word and it is unnecessary to accommodate more participants than necessary. However, the language allows for exceptions in the event the executive officer believes the specific facts warrant the participation of more individuals. Lastly, subparagraph 389(c)(1)(B) allows the

licensee to submit declarations or other documents pertinent to the subject matter of the letter of admonishment prior to the office conference.

Section 389(d)(1)(B)

This subparagraph allows the licensee to submit declarations and documents pertinent to the subject matter of the letter of admonishment.

This language is necessary because licensees should be able to submit information to contest the issuance of a letter of admonishment. It is necessary that licensees submit these declarations and documents before the office conference so that the executive officer or his or her designee has time to review them before the office conference.

Section 389(d)(1)(C)

This subparagraph specifies that the executive officer, or his or her designee, may affirm, modify, or withdraw the letter of admonishment. It also specifies that within 14 calendar days from the date of the office conference, the executive officer, or his or her designee, shall personally serve or send by certified United States mail to the licensee's address of record the executive officer or his or her designee's written decision. Lastly, it specifies that this decision shall be deemed a final administrative decision concerning the letter of admonishment.

This language is necessary because it should be clear what authority the executive officer, or his or her designee, has once the office conference has taken place. It is also necessary to require that the decision be either served on the licensee or sent by certified mail to his or her address of record to ensure that the licensee receives the decision. Lastly, it is necessary to inform the licensee that he or she is not entitled to a further appeal to the board of the decision.

Section 389(c)(1)(D)

Within thirty days of service or mailing of the written decision after the office conference, the licensee shall comply with the letter of admonishment and, if an order of abatement is included in the letter of admonishment, submit documentation showing compliance with the order.

This language is necessary because the licensee needs to be informed of what the time frame is for correcting the deficiency and the board needs verification that the licensee has corrected the deficiency.

Section 389(d)(2)

This subparagraph specifies that a licensee who has chosen the option of not requesting an office conference must comply with the letter of admonishment and submit documentation to the executive officer showing compliance.

This language is necessary because the board needs to ensure that a licensee who has been issued a letter of admonishment has corrected the matter.

Underlying Data:

The May 22, 2008 board meeting - draft minutes
The Pharmacy Law, Business and Professions Code Section 4315

Business Impact:

This regulation will not have a significant adverse economic impact on businesses. This initial determination is based on the following facts or evidence/documents/testimony:

This proposal provides the board with additional tools for enforcing compliance with applicable laws and regulations governing the practice of chiropractic, and will not result in additional costs because licensees is not being fined or otherwise monetarily punished.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative to the regulation would be either more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed regulation.